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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Billed Party Preference | ) | CC Docket No. 92-77 |
| for 0+ InterLATA Calls | ) | |

MOTION FOR LEAVE TO FILE SUMMARY ONE DAY LATE

The American Public Communications Council ("APCC") hereby requests leave to file a summary of its Further Comments in CC Docket No. 92-77, filed yesterday, August 1, 1994. These Further Comments were filed in response to the Commission's Further Notice of Proposed Rulemaking, FCC 94-117, released June 6, 1994.

In the process of completing APCC's Further Comments on August 1, 1994, the undersigned attorney omitted to include a summary of the Further Comments. A summary of the Further Comments is attached to this motion. APCC hereby requests leave to file the summary and requests that copies of the summary be associated with the copies of APCC's Further Comments on file at the Commission.

APCC also requests leave to file the attached corrected pages which correct three technical errors and omissions in the text of APCC's Further Comments. Corrected page 15 fills in the missing Section number of a cross-reference in the continuation of footnote 9 on that page. Corrected page 16 fills in two blanks in footnote 13's discussion of payphone statistics attached to APCC's Further Comments. Corrected page 22 corrects the number "30%" to read "40%" in a discussion of data on increased dial-around traffic.

Since the summary and corrected pages are being filed only one day after the comment filing date, no party will be prejudiced by grant of APCC's motion.

Respectfully submitted,

Robert F. Aldrich
KECK, MAHIN & CATE
1201 New York Ave., N.W.
Penthouse Suite
Washington, DC 20005

(202) 789-3400

Attorneys for the American
Public Communications Council

Dated: August 2, 1994

# ATTACHMENT 1

# SUMMARY

## <u>SUMMARY</u>

The Commission's billed party preference ("BPP") proposal is unnecessary, highly intrusive, and paternalistic. BPP is unnecessary because it adds nothing to consumer choice. Consumers already are guaranteed access to their carrier of choice from any public telephone. The BPP proposal is highly intrusive: it would deprive customer premises equipment ("CPE") owners of their long-upheld freedom to configure their CPE, and would force CPE owners to give up the revenue on which they depend to offer telephone equipment for public use.

The BPP proposal is fundamentally a paternalistic policy. If there were a substantial consumer need for this very expensive technology, BPP could be offered in the marketplace, without Commission intervention. Aggregators would voluntarily adopt BPP and publicize it, for example, by displaying a BPP logo on their phones. But, neither the Commission nor any BPP advocate is willing to put BPP to a true marketplace test. Instead, the Commission proposes to short-circuit the marketplace and <u>require</u> that BPP be uniformly available from every phone, because it <u>assumes</u> consumer willingness to pay for BPP.

In order to impose such an intrusive, paternalistic policy, the Commission must be very certain that the actual benefits outweigh the costs. The cost-benefit analysis in the <u>Further Notice</u> fails to consider numerous relevant factors and is largely erroneous or unsupported by the record. A study conducted by Dr. Charles L. Jackson and Dr. Jeffrey H. Rohlfs, of Strategic Policy Research (the "Jackson-Rohlfs study"), shows that a single category

of BPP's enormous costs will far exceed any benefits that can be properly attributed to BPP. Even accepting many of the FCC's questionable assumptions, the benefits of BPP would not exceed about 8 cents per call, while BPP's recurring network costs alone would total at least 11 cents per call. According to the Jackson-Rohlfs study, a more comprehensive assessment of BPP's true costs and benefits would show that BPP's costs would exceed benefits by a far greater margin -- with costs totaling at least three times as high as those estimated in the Further Notice. Jackson-Rohlfs study at 44.

Among the costs not fully considered in the Further Notice is the impact of BPP on the quantity and quality of public telephones. Competition from independent public payphones ("IPPs") ensures that payphones are available to numerous urban and rural areas that would otherwise go unserved or underserved. The ability to earn revenue on 0+ calls often makes the critical difference in determining whether or not it is profitable to maintain a payphone. If these calls are eliminated as a source of revenue, and alternative sources of revenue are not found, many of the payphones on which communities rely will be removed and will not be replaced, causing widespread inconvenience to consumers and removing the only communications link available to many consumers who cannot afford private telephones.

Similar degradation of service would affect the telephone systems of hotels, hospitals, universities, and prisons, absent alternative sources of revenue. (Any recovery of revenue by payphone providers or other aggregators, of course, would directly offset BPP's assumed benefits from commission savings.)

The Jackson-Rohlfs study also shows that the benefits of BPP are greatly overstated. While there would be some convenience benefits from dialing fewer digits, these benefits would be offset by post-dial delays, and the convenience value of shorter dialing time is relatively insignificant. APCC's data show that consumers already use access codes for well over half their interstate operator assisted calls. Given a clear choice about whether to pay the true costs of the convenience dialing represented by BPP, it is evident that most consumers would prefer to continue dialing access codes.

The "savings" benefits quantified by the Commission at $620 million are largely illusory. Most of these "savings" are attributable to elimination of commission payments. The Jackson-Rohlfs study indicates that the commission savings estimate in the _Further Notice_ involves substantial double counting which was not corrected. Jackson-Rohlfs Study at 20, n. 21. More fundamentally, as the Jackson-Rohlfs study explains, commissions are simply a transfer payment between telephone callers and equipment owners. The elimination of commissions does not save any social costs. Further, any commission "savings" would be largely offset. Aggregators would recover their lost commission revenue by adding telephone surcharges or increasing the price of other services. Alternatively, the commission "savings" would be offset by a reduction in the quantity and quality of public telephones as discussed above.

Other benefits assumed by the Commission, such as a reduction in regulatory costs, are also unsupported. BPP would require an equal or greater enforcement effort than access code unblocking, and there would be additional regulatory costs associated with regulating BPP prices and unbundling BPP services to allow competitive provision of BPP.

In light of the enormous costs and marginal benefits of BPP, the Commission is required to carefully consider alternatives for achieving its objectives. The Commission's primary concern, excessive operator service rates, should be addressed directly by using "benchmarks" to institute reasonable rate regulation of operator service rates. APCC supports reasonable benchmark regulation. In addition, APCC is willing to explore industry participation in implementing a rate enforcement program.

Another alternative that the Commission must consider in preference to adopting BPP is simplification of dialing sequences for access codes. It would be arbitrary and capricious to adopt mandatory BPP in preference to these less costly alternatives.

Apart from the disproportion of costs to benefits and the availability of less costly alternatives, there are fundamental legal obstacles to adoption of the Commission's BPP proposal. The Commission lacks statutory authority to compel equipment owners to interconnect their unregulated CPE with BPP. Further, such compelled interconnection would reverse decades of rulings in which the Commission has consistently upheld equipment owners' freedom to configure CPE in ways that are "privately beneficial without being publicly detrimental." Finally, APCC is aware of no precedent for requiring a non-dominant reseller to interconnect its service with a dominant carrier in the absence of a specific customer request.

In the event that, despite the overwhelming policy and legal reasons for terminating this docket, the Commission continues to pursue its BPP proposal, the Commission must ensure that competitors have the ability to offer BPP routing services. Competitors should have the option of offering routing functions to their customers for either some or all types of BPP calls. The Commission must carefully regulate LEC rates for BPP services and ensure that such services are unbundled to prevent monopolization of BPP.

In addition, the Commission must ensure that BPP costs can be recovered solely from the "cost causers" -- those consumers that actually use BPP. BPP costs must not be recovered from generally applicable access charges.

Finally, if the Commission does not adopt a mandatory BPP rule, it must fully compensate IPP providers for all revenues lost due to compulsory interconnection with BPP. Such compensation is required by the Takings Clause of the Fifth Amendment to the Constitution. Full compensation of IPP providers would far exceed

[redacted]

ATTACHMENT 2

CORRECTED PAGES

incentives to install and maintain payphones will be substantially reduced, resulting in fewer payphones and lower quality maintenance of those payphones that remain.

While other studies indicate that the rate of payphone growth has not been as high,[10] they nonetheless show that it is only the presence of competition, fueled by commissions, that has maintained the total number of payphones at existing levels. These studies indicate that the growth of independent payphones has been counterbalanced to some extent by a reduction in the

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[9](...continued) compensation for the use of IPPs to place BPP calls should not exceed the compensation originally prescribed for the use of IPPs to make dial-around calls. As discussed in Section VIII. below, there are several flaws in this reasoning. However, the important point here is that the Commission's prescribed dial-around compensation was expressly not designed to fully compensate IPP providers for all revenues lost to dial-around calls. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, CC Docket No. 91-35, 7 FCC Rcd 3251 (1992). Therefore, equivalent BPP compensation will not fully compensate IPP providers for all revenues lost to BPP.

In short, the level of compensation indicated by the Further Notice is inadequate to avoid loss of payphones. At that level, there will be a very large shortfall in IPP compensation, and a corresponding reduction in IPP providers' ability to finance installation of payphones at current levels. On the other hand, if the level of compensation is increased to equal the lost commissions, the effect intended by the Commission -- the "saving" of commission payments -- obviously cannot be achieved in the case of IPPs.

[10]Indeed, the Commission relied on one such study covering one RBOC region in concluding that the loss of commissions would not adversely affect the availability of public payphones. Further Notice at ¶ 33, n.57. In so doing, the Commission ignored contrary evidence submitted by APCC addressing the overall growth of public payphones. See above.

number of LEC payphones.[11] To the extent that such a reduction in LEC payphones has occurred, available evidence suggests that it is occurring because LECs are abandoning relatively low-volume locations, on the basis that the payphones do not provide the LECs with sufficient profit to justify their retention.[12] Indeed, several studies indicate that the largest single decrease in installed LEC payphones occurred in the 1983-85 time frame, before any significant number of IPPs had been deployed.[13] It is the growth of IPPs, which has depended in part on commission payments

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[11]These include a study by Mercer Management Consulting, which indicates that the installed base of LEC payphones declined sharply from 1.95 million in 1982 to 1.77 million in 1984, and continued to decline, but at a much lower rate, after the introduction of competition, reaching 1.66 million in 1992.

[12]For example, a recent article in The Daily Oklahoman noted that Southwestern Bell Telephone Company, under considerable public pressure and criticism, "reversed a decision to yank pay telephones from county courthouses where they failed to generate enough money to pay for themselves." McNutt, "Bell Reverses Decision to Remove Some Oklahoma Courthouse Pay Phones," The Daily Oklahoman, April 27, 1994 (reprinted in BusinessWire, April 27, 1994), attached as Exhibit 3. Southwestern Bell's actions are particularly noteworthy since Oklahoma is one of five states that has not authorized competition in the provision of payphones. Thus, Southwestern Bell decided to eliminate payphone service even though it did not face competition from IPP providers.

[13]For example, Mercer Management Consulting found a precipitous drop in LEC payphones, from 1.95 million in 1982 to 1.77 million in 1984, occurred before the introduction of competition. A study conducted by the Partridge Group in 1986 (Exhibit 2) shows that LEC deployment of payphones had already turned down before divestiture. Further, other data indicate that in certain years the number of installed LEC payphones incurs a sudden drop that cannot be explained as a function of competition from IPPs. For example, data gathered from the Florida Public Service Commission regarding payphones in Florida indicate that there was a sudden drop in LEC payphones between the years 1990 and 1991, with no corresponding sudden increase in IPPs. This provides further confirmation that declines in LEC payphones during the competitive era have occurred for reasons other than displacement by IPPs.

of likely post-dial delay. The value of this consumer convenience benefit from BPP is not of great significance, and certainly will not nearly outweigh the costs.

These assessments, which suggest that consumers derive, and hence place, only minor convenience value on the ability to do without access codes are consistent with the available data regarding the volume of access code dialing.

APCC's data show that access code calling has substantially increased since the TOCSIA unblocking requirements took effect. The most recent data collected from several thousand payphones between June 1993 and June 1994 indicate that more than 60% of interstate operator-assisted calls at IPPs were dialed with access codes, while less than 40% were dialed as 0+ calls. This represents an increase of more than 25 percentage points over 1991 levels (when SMDR data were used to estimate access code calling as 35% of operator assisted calls). If this rate of increase is projected out to 1997, the percentage of access code calls will increase further to 70% or more.

Consumers are also increasingly receptive to learning new access codes. Two recently introduced access codes, MCI's 1-800-COLLECT and AT&T's 1-800-CALL-ATT, have shown extremely high growth rates. In approximately one year, these codes have gone from being inactive to being among the most popular access codes used at APCC members' payphones. Data from one sample of more than